

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AARON J. SWANK,

Plaintiff,

vs.

**Case No.: 2:13-cv-0177
JUDGE SMITH
Magistrate Judge Deavers**

**THE FRANKLIN COUNTY,
OHIO PROSECUTOR, *et al.*,**

Defendants.

ORDER

On May 13, 2014, the United States Magistrate Judge issued a Report and Recommendation on Defendants Franklin County, Ohio Prosecutor and Franklin County, Ohio Public Defender, and Clerk Maryellen O'Shaughnessy's Motions to Dismiss. (*See Report and Recommendation*, Doc. 53). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Plaintiff Aaron Swank's Objections to the *Report and Recommendation*, and Defendant Ohio Public Defender's Response in Opposition. (*See Docs. 57 and 64*). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The objections present the issues presented to and considered by the Magistrate Judge in the *Report and Recommendation*. Plaintiff Swank asserts that the Franklin County Defendants are engaged in a policy, practice and custom of denying indigent defendants post-conviction discovery procedures/transcript of trial. However, the Magistrate Judge correctly held that

Plaintiff cannot establish that Defendants deprived him of a constitutional right because he does not have a constitutional right to state post-conviction review. *State v. Kinley*, 136 Ohio App. 3d 1, 7 (2000) (“State post-conviction review is not a constitutional right.”). Further, Plaintiff does not have a constitutional right to obtain discovery to assist in a meaningful post-conviction review. *Id.* For the reasons stated in the *Report and Recommendation*, this Court finds that the objections are without merit.

The *Report and Recommendation*, Document 53, is **ADOPTED** and **AFFIRMED**. The Franklin County Prosecutor, Public Defender, and Clerk’s Motions to Dismiss are hereby **GRANTED**.

The Clerk shall remove Documents 24, 31 and 53 from the Court’s pending motions list and shall dismiss this case.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT